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23 UNITED STATES DISTRICT COURT
24 FOR THE NORTHERN DISTRICT OF CALIFORNIA

25 CRELENCIO CHAVEZ,
26 Plaintiff,
27 v.
28 LUMBER LIQUIDATORS, INC.,
29 Defendant.

Case No. C-09-04812 SC

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

30 This Joint Stipulation of Settlement ("Stipulation" or "Settlement") is made and entered
31 into, as of the date set forth below, between the Plaintiff and Class Representative Jose Zaldivar,
32 ("Plaintiff" or "Class Representative"), and Defendant Lumber Liquidators, Inc. ("Defendant"),
33 who are parties to the above-captioned litigation (together, the "Parties").

1 **1. THE CONDITIONAL NATURE OF THIS STIPULATION**

2 1.1 This Stipulation and all associated exhibits or attachments are made for the sole
3 purpose of settling the above-captioned action. The Settling Parties (as defined herein) enter into
4 this Stipulation and associated Settlement on a conditional basis. If the Court does not enter the
5 Order of Final Approval, the proposed Judgment does not become a Final Judgment for any
6 reason, and/or the Effective Date does not occur, this Stipulation shall be deemed null and void
7 *ab initio*; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any
8 purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject
9 to the provisions of Federal Rule of Evidence 408, California Evidence Code §§ 119 and 1152,
10 and any other analogous rules of evidence that are applicable.

11 1.2 Defendant denies all liability, damages, penalties, interest, fees, restitution,
12 injunctive relief and all other forms of relief associated with Plaintiff's claims, as well as denies
13 the class action allegations asserted in the Action, as those terms are defined below. Defendant
14 has agreed to resolve the Action via this Stipulation, but to the extent this Stipulation is deemed
15 void or the Effective Date does not occur, Defendant does not waive, but rather expressly
16 reserves, all rights to challenge all such claims and allegations in the Action upon all procedural,
17 merit, and factual grounds, including, without limitation, the ability to challenge class, collective
18 and representative action treatment on any grounds, as well as asserting any and all other
19 privileges and potential defenses. The Class Representative and Class Counsel agree that
20 Defendant retains and reserves these rights, and the Class Representative and Class Counsel agree
21 not to argue or present any argument, and hereby waive any argument, that based on this
22 Stipulation, Defendant cannot contest class certification or class action or collective action or
23 representative action treatment on any grounds whatsoever, or assert any and all other privileges
24 or potential defenses if this Action were to proceed.

25 **2. DEFINITIONS**

26 The following terms, when used in this Joint Stipulation of Settlement and any related
27 settlement documents, shall have the following meanings:

28 2.1 "Action" means the above captioned action, identified as *Crelencio Chavez, et al.*

1 v. *Lumber Liquidators, Inc.*, pending in the U.S. District Court, Northern District of California,
2 Case No. C-09-04812 SC.

3 2.2 "LLI Releasees" means Lumber Liquidators, Inc. and all affiliated parties, entities
4 and persons (including but not limited to Lumber Liquidators, Inc. and its past and present
5 affiliates, parents, subsidiaries, predecessors, related entities, owners, successors, shareholders,
6 divisions, and each of these entities past and present directors, officers, employees partners,
7 shareholders and representatives).

8 2.3 "Claim Form" means the form entitled "Claim Form" in the same or substantially
9 the same form attached hereto as Exhibit 2. A timely and completed Claim Form must be
10 submitted to the Claims Administrator for a Class Member to claim his/her share of the
11 Maximum Settlement Amount. The Claim Form will also serve as written consent to become a
12 party plaintiff pursuant to § 216(b) of the Fair Labor Standards Act ("FLSA").

13 2.4 "Claims Administrator" means CPT Group.

14 2.5 "Claims Period Deadline" shall be the date sixty (60) calendar days after the
15 Settlement Documents are mailed to the Class Members by the Claims Administrator. However,
16 Defendant, in its sole and absolute discretion, may elect to accept late claims submitted after the
17 Claims Period Deadline has expired.

18 2.6 "Class" means all current and former retail store employees of LLI classified as
19 non-exempt and employed in California who were paid overtime wages and commission/sales
20 bonus wages and/or other nondiscretionary compensation between September 3, 2005 through the
21 present. The Class includes, but is not limited to, persons employed in the following position
22 categories and/or job titles: warehouse associate, sales associate, Assistant Store Manager 1,
23 Assistant Store Manager 2, and other non-exempt retail store employees.

24 2.7 "Class Counsel" means, collectively, Tafoya & Garcia LLP.

25 2.8 "Class Member" means each person eligible to participate in this Settlement who
26 is a member of the Class defined above.

27 2.9 "Class Period" means the time period from September 3, 2005 through and
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1 including the Preliminary Approval Date.

2 2.10 "Class Representative" or "Plaintiff" means Plaintiff Jose Reyes Zaldivar.

3 2.11 "Class Representative's Released Claims" means any and all claims, obligations,
4 demands, actions, rights, causes of action, and liabilities against the LLI Releasees, of whatever
5 kind and nature, character, and description, whether in law or equity, whether sounding in tort,
6 contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other
7 source of law or contract, whether known or unknown, and whether anticipated or unanticipated,
8 including all unknown claims covered by California Civil Code § 1542, as quoted in Section 6.8.4
9 below, by the Class Representative, arising at any time up to and including the date on which the
10 Court enters the Order of Final Approval, for any type of relief, including without limitation
11 claims for wages, premium and other forms of pay, unpaid/unreimbursed costs, penalties
12 (including waiting time penalties), general damages, compensatory damages, liquidated damages,
13 punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and
14 equitable and declaratory relief. The Class Representative's Released Claims include, but are not
15 limited to, the Released Claims as well as any other claims under any provision of the Fair Labor
16 Standards Act ("FLSA"), the California Labor Code¹, any applicable California Industrial
17 Welfare Commission Wage Orders, any city or county Living Wage Ordinances, and claims
18 under state or federal discrimination statutes, including, without limitation, the California
19 Government Code; the Unruh Civil Rights Act, California Civil Code; the California
20 Constitution; the California Business and Professions Code, including but not limited to §§ 17200
21 *et seq.*; the United States Constitution; the Age Discrimination in Employment Act ("ADEA")
22 and the Older Workers Benefit Protection Act; the Uniformed Services Employment and
23 Reemployment Rights Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*;
24 the Family and Medical Leave Act, to the extent not prohibited by law; the Americans with
25 Disabilities Act, 42 U.S.C. § 12101 *et seq.*; and the Employee Retirement Income Security Act of
26 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive
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28 ¹ References to the "Labor Code" herein shall be to the California Labor Code.

1 guidelines. As a condition to this settlement, the named Plaintiff Zaldivar will provide a full and
2 general release of all known and unknown claims, including but not limited to, all claims alleged
3 or that could have been alleged in the Second Amended Complaint.

4 2.12 "Complaint" means the then-current (i.e., most recently amended) operative
5 Complaint in this Action pending in the United States District Court for the Northern District of
6 California.

7 2.13 "Court" means the United States District Court, Northern District of California.

8 2.14 "Defendant's Counsel" means Morgan, Lewis & Bockius LLP.

9 2.15 "Effective Date" means the date on which the Judgment becomes a Final
10 Judgment.

11 2.16 "Final Approval Date" means the date on which the Court enters the Order of
12 Final Approval.

13 2.17 "Final Approval Hearing" means a hearing set by the Court, to take place on a date
14 established by the Court, for the purpose of (i) determining the fairness, adequacy, and
15 reasonableness of the Stipulation terms and associated Settlement pursuant to class action
16 procedures and requirements; (ii) determining the amount of the award of attorneys' fees and
17 costs to Class Counsel; (iii) determining the amount of the Service Payment to the Class
18 Representative; and (iv) entering the Judgment.

19 2.18 "Final Judgment" means the latest of the following dates: (i) if no Class Member
20 files an objection to the Settlement, then the date the Court enters a judgment dismissing all of the
21 Class claims in the Action and an Order of Final Approval of the Settlement; (ii) if a Class
22 Member files an objection to the Settlement, then after the applicable date for seeking appellate
23 review of the District Court's final approval of the Settlement has passed, assuming no appeal or
24 request for review is filed; or (iii) if an appeal is filed, the final resolution of that appeal
25 (including any requests for rehearing and/or petitions for writ of certiorari) resulting in the final
26 judicial approval of the Settlement. Notwithstanding the foregoing, any proceeding, order, or
27 appeal pertaining solely to the award of attorneys' fees, costs or the Service Payment to the Class
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1 Representative shall not by itself in any way delay or preclude the Judgment from becoming a
2 Final Judgment.

3 2.19 "Judgment" means the judgment to be executed and filed by the Court pursuant to
4 this Stipulation following the Final Approval Hearing.

5 2.20 "Maximum Settlement Amount" is the maximum gross total settlement amount of
6 \$140,000, which amount shall include: (1) all payments to Plaintiff Jose Zaldivar and Class
7 Members pursuant to this Settlement; (2) all Attorneys' Fees and Costs and expenses related to
8 the claims released in accordance with Paragraph 4 below, the Litigation, documenting the
9 settlement, securing trial and appellate court approval of the settlement, and obtaining dismissal
10 with prejudice of the Litigation; (3) an individual service payment to Plaintiff Jose Zaldivar to
11 compensate him for his execution of a general release of all known and unknown claims, in
12 accordance with Paragraph 6 below; (4) all costs associated with administering the settlement,
13 including costs and fees to be paid to the Claims Administrator; and (5) the payment to the
14 California Labor Workforce Development Agency for settlement and release of claims for
15 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, *et seq.*

16 2.21 "Notice of Settlement" means the document provided to Class Members to notify
17 them of the settlement, a copy of which is attached hereto as Exhibit 1.

18 2.22 "Parties" means Plaintiff and Defendant collectively.

19 2.23 "Preliminary Approval Date" means the date on which the Court enters the Order
20 approving the Stipulation of Settlement, and the exhibits thereto, and providing for notice to the
21 Class, an opportunity to opt out of the Class, an opportunity to submit timely objections to the
22 settlement, a procedure for submitting claims, and setting a hearing on the fairness of the terms of
23 settlement, including approval of the Service Payment and attorneys' fees and costs.

24 2.24 "Qualified Claimant" means a Class Member who has timely submitted a fully and
25 correctly completed and signed and dated Claim Form. A Qualified Claimant shall also include a
26 Class Member who has submitted a correctly completed and signed Claim Form that is late, but
27 whose Claim Form is nonetheless accepted by Defendant, in its sole discretion, as provided
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1 herein.

2 2.25 "Released Claims" shall mean any and all federal, state, and local law claims
3 related or pertaining to the: (a) failure to pay overtime wages; (b) failure timely to pay wages
4 resulting from the failure to pay overtime wages; (c) failure timely to pay final wages upon
5 termination; (d) failure to provide accurate, itemized wage statements; and (e) all penalties
6 (including but not limited to civil and statutory penalties, including penalties under the Private
7 Attorneys General Act), liquidated damages, punitive damages, interest, attorneys' fees, litigation
8 costs, restitution and equitable relief (including under Business & Professions Code §§ 17200 *et*
9 *seq.*), or additional damages that arise from or relate to the claims described in (a) through (d)
10 above under any applicable law, that accrued or accrue through the last date on which an Opt-Out
11 Request must be submitted to the Claims Administrator (as set forth below) ("Released Claims").
12 State and Federal Statutory Claims: The Released Claims specifically include any and all claims
13 arising under the Fair Labor Standards Act; any and all claims arising under the California Labor
14 Code, including, without limitation, §§ 201, 202, 203, 204, 204b, 210, 215, 216, 218.5, 218.6,
15 225.5, 226, 226.3, 226.6, 510, 558, 1194, 1194.2, 1194.3 and 2698-2699.5, and the California
16 Business & Professions Code §§ 17200 *et seq.*; and any and all claims arising under any
17 applicable California Industrial Welfare Commission Wage Order(s). Settlement Class Members
18 who do not timely opt out of the settlement shall be deemed to have fully released all Released
19 Claims. Settlement Class Members who do not submit a Claim Form or who submit late Claim
20 Form that is not accepted by Defendant will not be deemed to have waived or released any
21 claim(s) that may exist under the FLSA. With regard to the Released Claims only, Settlement
22 Class Members waive all rights under California Civil Code section 1542, which states: "A
23 general release does not extend to claims which the creditor does not know about or suspect to
24 exist in his or her favor at the time of executing the release, which if known by him or her must
25 have materially affected his or her settlement with the debtor."

26 2.26 "Service Payment" means the amount approved by the Court to be paid to the
27 Class Representative, in recognition of his efforts in coming forward as Class Representative,

1 submitting to a day-long deposition, assisting Plaintiff's counsel in the prosecution of this Action,
2 and as consideration for a full, general, and comprehensive release of his Released Claims, which
3 shall be in addition to his portion of the Settlement Payment. The Service Payment for the Class
4 Representative shall not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), with
5 reversion to the Settlement Pool of any portion not awarded by the Court upon application of
6 Class Counsel. Defendant will not oppose Class Counsel's application for the Service Payment
7 for the Class Representative.

8 2.27 "Settlement Documents" means this Joint Stipulation of Settlement, the Notice of
9 Settlement (Exhibit 1) and the Claim Form (Exhibit 2).

10 2.28 "Settlement Payment" means the amount due each Qualified Claimant under the
11 terms of this Stipulation.

12 2.29 "Settling Parties" means Defendant, LLI Releasees, and Plaintiff and the
13 Settlement Class.

14 2.30 "Settling Plaintiff(s)" and/or "Settlement Class" mean all Class Members who do
15 not timely submit a signed and valid Opt-Out Request to the Claims Administrator.

16 2.31 "Settlement Pool" is the portion of the Maximum Settlement Amount available for
17 distribution to Qualified Claimants. It equals the Maximum Settlement Amount less Court-
18 approved attorneys' fees and costs, settlement administration costs, the Court-approved Class
19 Representative Service Payment, and the payment to the State of California LWDA.

20 2.32 "Stipulation of Settlement" or "Stipulation" or "Settlement" shall mean this Joint
21 Stipulation of Settlement, signed by counsel for all of the Parties.

22 2.33 "Weeks Worked" or "Workweeks" shall mean the number of full (i.e., non-partial)
23 workweeks that each Class Member worked in California in an eligible position category or job
24 title during the Class Period for one of the LLI Releasees, which shall be calculated and weighted
25 pursuant to Section 6.7.

26 3. DESCRIPTION OF THE LITIGATION

27 3.1 On September 3, 2005, Plaintiffs Crelencio Chavez and Jose Zaldivar filed a
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1 putative class action complaint against Defendant in the California Superior Court, County of
2 Alameda, captioned *Crelencio Chavez and Jose Zaldivar, an individual and on behalf of all*
3 *others similarly situated, v. Lumber Liquidators, Inc., et al.*; Case No. RG09472265. The action
4 was removed to the U.S. District Court for the Northern District Court of California on or about
5 October 3, 2009, and assigned Case No. C-09-04812 SC.

6 3.2 In January 2010, Plaintiffs filed the currently operative Second Amended
7 Complaint, which contained the following seven claims: (1) failure to pay minimum and overtime
8 wages in violation of California Labor Code § 1194; (2) failure to pay overtime wages in
9 violation of Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207; (3) failure to provide meal
10 breaks and pay premium pay under California Labor Code § 226.7; (4) failure to pay vacation
11 upon termination in violation of Labor Code § 227.3; (5) failure to reimburse business expenses
12 in violation of Labor Code § 2802; (6) failure to provide accurate wage statements in violation of
13 Labor Code § 226; and (7) unfair business practices in violation of California Business &
14 Professions Code §§ 17200, *et seq.* The action was brought on behalf of a proposed class that
15 included current and former non-exempt hourly employees of Defendant in California who
16 received both overtime pay and commission/bonus wages from September 3, 2005 through the
17 present.

18 3.3 On December 30, 2011, Plaintiffs Chavez and Zaldivar sought class certification
19 of five proposed classes of former and current employees of Defendant employed in stores in
20 California during the period from September 3, 2005 to the present. In an Order dated March 26,
21 2012, the Court granted certification of one class represented by Plaintiff Zaldivar and denied
22 certification of all other proposed classes. Specifically, the Court certified the following "Unpaid
23 Overtime Class":

24
25 [A]ll past and current retail store employees of [Defendant] classified by [Defendant] as
26 non-exempt employees ... and employed in California from September 3, 2005 through the
27 present, who were paid overtime wages and were also paid commission wages and/or other non-

1 discretionary pay or bonuses.

2
3 3.4 Through substantial and extensive informal and formal discovery, Defendant
4 provided Plaintiff's counsel with voluminous class data, including hundreds of thousands of rows
5 of actual sales bonus/commission amounts, and overtime and double-time payments paid to Class
6 Members and the dates on which they were paid, the number of former employees, written
7 policies, records reflecting Plaintiff's time worked, meal period logs, earnings statements,
8 company bonus plans, and other evidence of bonus payments for the Class Period. Many of these
9 documents were produced following law and motion briefing and hearing before the Magistrate
10 Judge. Defendant deposed Plaintiff Zaldivar. Defendant produced a corporate witness pursuant
11 to Rule 30(b)(6) of the Federal Rule of Civil Procedure for two (2) full days of deposition by
12 Plaintiff's counsel.

13 3.5 On May 21, 2013, the Parties participated in a day-long mediation with Court-
14 appointed mediator Richard S. Whitmore in San Francisco, California. Negotiations continued
15 after that date, and the Parties accepted a mediator's proposal and finalized the terms of their
16 agreement on May 29, 2013. The mediation and all of the terms of that settlement are contained
17 within this Stipulation of Settlement. At all times, the Parties' settlement negotiations have been
18 non-collusive, adversarial, and at arm's length.

19 3.6 Discussions between counsel for the Parties, informal discovery, as well as the
20 respective investigation and evaluation of Plaintiff's claims by the Parties, have permitted each
21 side to assess the relative merits of the claims and the defenses to those claims. The Parties agree
22 that the above-described investigation and evaluation, as well as discovery and the information
23 exchanged during the settlement negotiations, are sufficient to assess the merits of the respective
24 Parties' positions and to compromise the issues on a fair and equitable basis.

25 **4. BENEFITS OF THE SETTLEMENT TO THE PARTIES**

26 4.1 Based on their own independent investigations and evaluations, Class Counsel is
27 of the opinion that the Settlement with Defendant for the consideration and terms set forth herein
28 is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best

1 interests of the Class. Class Counsel is of the opinion that the total consideration and payment set
2 forth in this Stipulation of Settlement is adequate in light of the uncertainties surrounding the risk
3 of further litigation, the possibility of losing a motion for decertification, and the defenses that
4 Defendant has asserted and/or could assert as to the substantive merit of the claims.

5 4.2 Class Counsel has weighed the monetary benefit under the Settlement to the
6 Settlement Class against the expenses and length of continued proceedings that would be
7 necessary to prosecute the Action against Defendant through a motion for decertification, motion
8 for summary judgment, trial and possible appeals. Class Counsel has also taken into account the
9 uncertain outcome and risk of any litigation, especially in complex actions such as class actions,
10 as well as the difficulties and delay inherent in such litigation. As a result, Class Counsel has
11 determined that the settlement set forth in this Stipulation of Settlement is in the best interests of
12 the Settlement Class.

13 5. **DEFENDANT'S POSITION**

14 5.1 Defendant and the LLI Releasees specifically and generally deny any and all
15 liability or wrongdoing of any sort with regard to the claims alleged, make no concessions or
16 admissions of liability of any sort, and contend that for any purpose other than Settlement, the
17 Action is not appropriate for class action, collective action, or representative action treatment.
18 Nonetheless, Defendant has concluded that further conduct of the Action would be protracted,
19 distracting and expensive, and that it is desirable that the Action be fully and finally settled in the
20 manner and upon the terms and conditions set forth in this Stipulation. Defendant has also taken
21 into account the uncertainty and risks inherent in any litigation. Defendant has therefore
22 determined that it is desirable and beneficial to settle the Action in the manner and upon the terms
23 and conditions set forth in this Stipulation.

24 5.2 Neither this Stipulation of Settlement, nor any document referred to in it, nor any
25 actions taken pursuant to this Stipulation of Settlement, is or should be construed as an admission
26 by Defendants of any fault, wrongdoing, or liability whatsoever. Nor should the Stipulation of
27 Settlement be construed as an admission that Plaintiff and the purported class meet any of the
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1 required elements for certification under Rule 23 of the Federal Rules of Civil Procedure or that a
2 collective action could be certified under the FLSA.

3 5.3 Defendant and its counsel have concluded that it is desirable that the Action be
4 settled in a manner and upon such terms and conditions set forth herein in order to avoid further
5 expense, inconvenience and distraction of further legal proceedings, and the risk of the outcome
6 of the Action. Therefore, Defendant has determined that it is desirable and beneficial to resolve
7 the claims in the Action.

8 **6. OPERATIVE TERMS OF SETTLEMENT**

9 The Parties to this case agree as follows:

10 6.1 Class Certification

11 6.1.1 The Parties stipulate, for settlement purposes only, to the certification by
12 the Court of the Class, as defined herein.

13 6.1.2 If, for any reason, the Court does not approve this Stipulation, fails to enter
14 the Judgment, or if this Stipulation is terminated for any other reason, Defendant shall, and
15 hereby does, retain the right to dispute the appropriateness of class certification.

16 6.2 Maximum Settlement Amount

17 6.2.1 Defendants shall pay an amount not to exceed One Hundred and Forty
18 Thousand Dollars and Zero Cents (\$140,000.00) as the Maximum Settlement Amount to resolve
19 the Action on a class-wide basis, as described more fully below. The Maximum Settlement
20 Amount includes the costs of administration of the Settlement, which the Parties estimate will
21 likely not exceed \$15,000.00; reasonable attorneys' fees and costs as determined by the Court
22 (not to exceed 30% of the Maximum Settlement Amount) for Class Counsel; the Service Payment
23 to Class Representative Jose Zaldivar (not to exceed Ten Thousand Dollars and Zero Cents
24 (\$10,000.00)), and a payment of Seven Thousand and Five Hundred Dollars and Zero Cents
25 (\$7,500.00) to the California Labor and Workforce Development Agency ("LWDA") for the
26 State of California's share of the PAGA penalties, with the balance ("Settlement Pool") to be
27 used to pay the Settlement Payments to Qualified Claimants pursuant to Section 6.7 below.

1 6.2.2 Notwithstanding the foregoing, in addition to the Maximum Payment
2 Amount, Defendant will pay the employer's portion of payroll taxes, including FICA and FUTA,
3 on the portion of each Settlement Payment allocated as unpaid wages, in an amount to be
4 calculated by the Claims Administrator.

5 6.3 Class Representative Service Payment

6 6.3.1 The Class Representative's Service Payment (which is in addition to his
7 payment from the Settlement Pool) will, subject to Court approval, be paid out of the Maximum
8 Settlement Payment in an amount not to exceed Ten Thousand Dollars and Zero Cents
9 (\$10,000.00) for his service and assistance to the Class. For purposes of tax withholding, the
10 Service Payment will be treated as 95% attributable to wages and 5% attributable to interest and
11 penalties, and required payroll taxes will be withheld as appropriate from the portion treated as
12 wages. Any amount of the Class Representative Service Payment that is not awarded by the
13 Court shall revert to the Settlement Pool.

14 6.4 Attorneys' Fees and Attorneys' Costs

15 6.4.1 Class Counsel shall apply to the Court for an award of reasonable
16 attorneys' fees/costs not to exceed Forty Two Thousand Dollars and Zero Cents (\$42,000.00),
17 which represents approximately 30% of the Maximum Settlement Amount. Defendant will not
18 oppose Class Counsel's request for Attorneys' Fees and Costs consistent with this Stipulation.
19 (Attorneys' Costs does not include "Settlement Administration Costs".) Any amount of attorneys'
20 fees and/or costs not awarded by the Court shall revert to the Settlement Pool.

21 6.5 PAGA Payment

22 6.5.1 Defendant shall pay a total amount of Ten Thousand Dollars and Zero
23 Cents (\$10,000.00) in settlement of all claims for civil penalties under the PAGA. Defendants
24 shall pay 75% of the PAGA settlement amount (i.e., Seven Thousand Five Hundred Dollars and
25 Zero Cents (\$7,500.00)) to the LWDA. The remaining Two Thousand Five Hundred Dollars and
26 Zero Cents (\$2,500.00) shall be included in the Settlement Pool and distributed to the Qualified
27 Claimants.

1 6.6 Claims Administrator

2 6.6.1 The Claims Administrator shall be CPT Group. All fees and expenses
3 reasonably incurred by the Claims Administrator as a result of the procedures and processes
4 expressly required by this Stipulation (the "Settlement Administration Costs") shall be paid out of
5 the Maximum Settlement Payment and are not expected to exceed Fifteen Thousand Dollars and
6 Zero Cents (\$15,000.00). Under no circumstances will Defendant be required to contribute
7 additional funds, above and in addition to the Maximum Settlement Payment, to cover any
8 unexpected Settlement Administration Costs. The Settlement Administration Costs shall include:
9 all costs of administering the Settlement, including, but not limited to, all tax document
10 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs
11 and fees associated with establishing and maintaining a Qualified Settlement Fund ("QSF"); all
12 costs and fees associated with preparing, issuing and mailing any and all notices and other
13 correspondence to Class Members and/or Qualified Claimants; all costs and fees associated with
14 communicating with Class Members, Class Counsel, and Defendants' Counsel; all costs and fees
15 associated with computing, processing, reviewing, and paying the Settlement Payments, and
16 resolving disputed claims; all costs and fees associated with calculating tax withholdings and
17 payroll taxes, making related payment to federal and state tax authorities, and issuing tax forms
18 relating to payments made under the Settlement; all costs and fees associated with preparing any
19 tax returns and any other filings required by any governmental taxing authority or agency; all
20 costs and fees associated with preparing any other notices, reports, or filings to be prepared in the
21 course of administering Settlement Payments; and any other costs and fees incurred and/or
22 charged by the Claims Administrator in connection with the execution of its duties under this
23 Stipulation.

24 6.6.2 The actions of the Claims Administrator shall be governed by the terms of
25 this Stipulation and any Orders from the Court and any agreement by counsel of record for the
26 Parties regarding communications with the Settlement Administrator. Absent any agreement,
27 Defendant and its counsel may communicate with the Claims Administrator without notice and/or

1 copies to opposing counsel.

2 6.6.3 In the event that either Defendant's Counsel or Class Counsel take the
3 position that the Claims Administrator is not acting in accordance with the terms of the
4 Stipulation, such party shall meet and confer first with opposing counsel and/or, if necessary, with
5 the Claims Administrator or the Court to attempt to resolve the issue.

6 6.7 Calculation of Settlement Payments

7 6.7.1 Each Class Member will be entitled to apply to receive a settlement
8 payment (the "Settlement Payment"), which will be paid out of the Maximum Settlement
9 Amount. The Settlement Payment amount for a Class Member who becomes a Qualified
10 Claimant shall be calculated as follows:

11 (a) For each Qualified Claimant, the Claims Administrator will
12 calculate an Overtime Settlement Amount, which will be based on the amount of overtime hours
13 worked and amount of commission/sales bonus wages he/she was paid while employed by
14 Defendant in California from September 3, 2005 through the present and calculated specifically
15 using the following steps: For any period of time within the Class Period during which
16 Defendant did not include commission/sales bonus wages in the calculation of the "regular rate"
17 for payment of overtime, (1) the total monthly commission/sales bonus wages will be divided by
18 the total monthly hours worked during the month in which the commission/sales bonus was
19 earned, (2) the sum of that figure will be divided by 2 to arrive at the sales bonus overtime rate,
20 (3) the applicable sales bonus overtime rate shall be multiplied by all overtime hours worked
21 during the month in which the commission/sales bonus was earned, (4) the applicable sales bonus
22 overtime rate shall be multiplied by 2 and then multiplied by all doubletime hours (if any) worked
23 during the month in which the commission/sales bonus was earned, and (5) the sum of the results
24 of steps 3 and 4 shall be the Overtime Settlement Amount.

25 (b) After the Overtime Settlement Amount is deducted from the
26 Settlement Pool, any remaining amount will be distributed to Class Members *pro rata* on a
27 workweek basis for all Eligible Workweeks worked by Class Members. All Workweeks for
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1 Class Members whose employment terminated prior to the Preliminary Approval Date and after
2 September 3, 2006, will be credited with an additional two (2) Workweeks to recognize the
3 potential recovery of Labor Code § 203 waiting time penalties for those Class Members. For
4 example, a former employee Class Member who worked for five (5) Workweeks prior to the
5 Preliminary Approval Date but after September 3, 2006 and five (5) Workweeks prior to
6 September 3, 2006 would be credited with twelve (12) Eligible Workweeks (e.g., 5 + 2 + 5).

7 (c) "Eligible Workweeks" mean, and are calculated using, the number
8 of pay periods for which each Class Member received a pay check (which thus reflects full work
9 workweeks) while the Class Member worked in an eligible position category or job title during
10 the Class Period. This calculation methodology is intended to reflect compensation for periods
11 when Class Members were actually working (i.e., it does not credit a Class Member for periods of
12 time, such as during a leave of absence, when the Class Member was employed but not actually
13 working and not subjected to the alleged unlawful practices at issue). The total of all Eligible
14 Workweeks worked by all Class Members in eligible position categories or job titles, calculated
15 in the manner discussed in this section, and adjusted pursuant to the weighting formula as set
16 forth in 6.7.1(b) above, will be the total Eligible Workweeks.

17 (d) After the Overtime Settlement Amount is deducted from the
18 Settlement Pool, the remaining amount will be divided by the total Eligible Workweeks to
19 produce a dollar amount that will be the value of one Eligible Workweek: (e.g., Settlement Pool
20 minus Overtime Settlement Amount ÷ Total Eligible Workweeks = Workweek Value). The
21 payment that each Qualified Claimant may receive for his or her Eligible Workweeks (provided
22 he or she timely and properly files a claim) is determined by multiplying each Qualified
23 Claimant's individual Eligible Workweeks by the Workweek Value.

24 6.7.2 The Parties recognize that the Settlement Payments to be paid to Class
25 Members reflect settlement of a dispute over claimed wages, interest, penalties, and other alleged
26 damages. All Settlement Payments to Class Members shall be allocated as follows for tax
27 purposes: unpaid wages to Class Members = 33.33% of each Settlement Payment; interest =

1 33.33% of each Settlement Payment; and penalties = 33.33% of each Settlement Payment. The
2 portion of the Settlement Payment attributable to unpaid wages will be subject to regular and/or
3 applicable payroll and income tax withholdings (for the employee portion only), and will be
4 reported on an IRS Form W-2. As to those portions of the Settlement Payments reported as non-
5 wage income, the Class Representative and Qualified Claimants each agree to indemnify and hold
6 harmless Defendant for any taxes due or owing by them with respect such payments and/or any
7 penalties and interest owed by Defendant for the failure to withhold with respect to such
8 payments. The Claims Administrator shall make appropriate tax withholdings from the portion of
9 each Settlement Payment designated as unpaid wages, and shall pay the employer portion of the
10 taxes and withholdings with funds separate from the Maximum Settlement Payment (to be
11 furnished by Defendants). Class Members will be responsible for paying all other taxes due on
12 their Settlement Payments. Other than as set forth above, the Claims Administrator will not make
13 any deductions, withholdings, or additional payments, including without limitation, medical or
14 other insurance payments or premiums, employee 401(k) contributions or matching employer
15 contributions, wage garnishments to the extent permitted by law, or charity withholdings, from or
16 with respect to the payments to Class Members, and entry of the Order of Final Approval by the
17 Court shall be deemed authority not to make any such deductions, withholdings, or additional
18 payments.

19 6.7.3 Neither the Settlement nor any amounts paid under the Settlement will
20 modify any previously credited hours or service under any employee benefit plan, policy, or
21 bonus program sponsored by Defendants. Such amounts will not form the basis for additional
22 contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored
23 benefit plans, policies, or bonus programs. The payments made under the terms of this
24 Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,
25 earnings, wages, or any other form of compensation for the purposes of the LLI's Releasees'
26 benefit plans, policies, or bonus programs. The LLI Releasees retain the right to modify the
27 language of their benefit plans, policies and bonus programs to effectuate this intent, and to make

1 clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid,"
2 "hours of service," or any similar measuring term as defined by applicable plans, policies and
3 bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that
4 additional contributions or benefits are not required by this Stipulation of Settlement.

5 6.7.4 Qualified Claimants will receive a Settlement Payment that is the sum of
6 his or her Overtime Settlement Amount and total Eligible Workweek value.

7 6.7.5 If a Class Member does not timely submit a Claim Form, he or she shall
8 not be entitled to, and shall not, recover any money pursuant to this Settlement and shall not
9 receive a Settlement Payment. Any unclaimed portions of the Settlement Pool shall remain and
10 be treated as Defendant's property and shall not be paid out to Class Members. In that respect,
11 this is a "claims made" (i.e., reversionary) settlement.

12 6.8 Releases

13 6.8.1 Upon Final Approval, the Class Representative shall be deemed to have
14 fully, finally, and forever released the LLI Releasees from all Class Representative's Released
15 Claims that exist or accrued through the Final Approval Date.

16 6.8.2 In addition, the Class Representative shall be deemed to have expressly
17 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits
18 he may otherwise have had relating to the Class Representative's Released Claims pursuant to
19 § 1542 of the California Civil Code, which provides as follows:

20 *A general release does not extend to claims which the creditor does*
21 *not know or suspect to exist in his or her favor at the time of*
22 *executing the release, which if known to him or her must have*
23 *materially affected his or her settlement with the debtor.*

24 6.8.3 Upon Final Approval, all Class Members shall be deemed to have fully,
25 finally, and forever released the LLI Releasees from all of the Released Claims through the date
26 on which Opt-Out Requests must be submitted with the Claims Administrator (which is the same
27 as the Claims Period Deadline). Provided, however, that Class Members who do not submit
28 Claim Forms will not be deemed to have released any claims under the FLSA.

6.8.4 With respect to the Released Claims only, and subject to Section 6.8.1.

1 above, Plaintiff and each Class Member shall be deemed to have expressly waived and
2 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he/she may
3 otherwise have had pursuant to § 1542 of the California Civil Code, which provides as follows:

4 *A general release does not extend to claims which the creditor does*
5 *not know or suspect to exist in his or her favor at the time of*
6 *executing the release, which if known to him or her must have*
7 *materially affected his or her settlement with the debtor.*

8 6.8.5 The above releases shall take effect unconditionally upon the Effective
9 Date.

10 7. NOTICE TO CLASS AND CLAIM PROCEDURE

11 7.1 Preliminary Approval

12 7.1.1 Class Counsel jointly submit to the Court this Joint Stipulation of
13 Settlement and exhibits thereto for preliminary approval by the Court. Class Counsel will prepare
14 and file the Preliminary Approval papers for the Court, subject to Defendant's prior review and
15 approval. The Court's preliminary approval of this Settlement shall be embodied in an Order
16 certifying the Class for settlement purposes only, preliminarily approving the Settlement and
17 providing for Settlement Documents to be mailed to the Class in the format attached hereto as
18 Exhibits 1 and 2, and which will also set the date for the final approval hearing.

19 7.2 Notice

20 7.2.1 No later than twenty (20) calendar days after the Court issues the
21 Preliminary Approval Order, Defendant shall provide to the Claims Administrator in electronic
22 form, a list of each Class Member, including each person's name, last known address, social
23 security number, employment status (current or former), number of Eligible Workweeks, and
24 Overtime Settlement Amount ("Database"). The Database shall be based on Defendant's
25 personnel, payroll, and/or other business records and provided in a format acceptable to the
26 Claims Administrator. Defendant agrees to consult with the Claims Administrator prior to the
27 production date to ensure that the format will be acceptable to the Claims Administrator. The
28 Claims Administrator shall maintain the Database, and all data contained within the Database, as
private and confidential and shall not disclose such data to any persons or entities other than

1 counsel for Defendant, unless otherwise required by law. To the extent the Claims Administrator
2 receives inquiries from individual Class Members, the Claims Administrator will apprise the
3 Parties of the fact of the inquiry without disclosing the Class Member's name. The Claims
4 Administrator will attempt to resolve any such inquiry and may involve the Parties' respective
5 counsel to the extent necessary. In the event that the inquiry cannot be resolved adequately by the
6 Claims Administrator and, if necessary, the Parties, then the Parties shall meet and confer in good
7 faith regarding whether disclosure of the individual Class Member's name to Class Counsel will
8 assist in resolution of the inquiry. If Class Counsel is contacted by a Class Member regarding
9 his/her data, the Claims Administrator shall identify and disclose that specific Class Member's
10 data upon the request of Class Counsel. Upon production of the Database, Defendant will verify
11 that to the best of its knowledge the database is complete and accurate and provides all of the
12 information required pursuant to this Stipulation and any applicable court orders. The
13 information in the Database is being supplied solely for purposes of the administration of the
14 settlement and hence cannot be used by the Claims Administrator for any purpose other than to
15 administer the Settlement. Upon receipt of the Database, the Claims Administrator shall check
16 with the U.S. Postal Service National Change of Address Database and update any addresses with
17 any new information found regarding the location of Class Members. Twenty-five (25) calendar
18 days after the Claims Administrator mails the Notice of Settlement, the Claim's Administrator
19 shall run a "skip-trace" of the Class Members listed as former employees in the Database who
20 have not, at that point, returned a Claim Form or otherwise contacted the Claims Administrator.
21 The Claims Administrator will update the Database with all new contact information found
22 pursuant to its obligations in this paragraph.

23 7.2.2 Within thirty (30) calendar days of the Preliminary Approval Date, the
24 Claims Administrator will send via United States first class mail the Notice of Settlement and
25 Claim Form to the Class Members, and the Claim Form shall include the estimated Settlement
26 Payment, as calculated under Section 6.7, that a Qualifying Claimant would be eligible to receive.
27 The Notice of Settlement shall advise Class Members of their options, which include: filing a

1 timely and correctly completed Claim Form, filing an Opt-Out Request, filing an objection to the
2 Settlement; or taking no action.

3 7.2.3 If any Settlement Documents are returned to the Claims Administrator as
4 undeliverable, the Claims Administrator shall run a skip-trace using that Class Member's social
5 security number in an effort to attempt to ascertain the current address of the Class Member. If
6 such an address(es) is ascertained, the Claims Administrator shall re-mail the Settlement
7 Documents within ten (10) calendar days. If alternative addresses are obtained for a Class
8 Member, the Claims Administrator shall send the Notice of Settlement and Claim Form to up to
9 three (3) alternative addresses.

10 7.2.4 In order to claim his/her share of the Settlement Pool, a Class Member
11 must submit to the Claims Administrator a signed and dated Claim Form that is postmarked
12 within sixty (60) calendar days from the initial mailing of the Settlement Documents ("the Claims
13 Period Deadline"). The Claim Form will also serve as each Class Member's written consent to
14 become a party plaintiff pursuant to § 216(b) of the FLSA. Except as provided herein, no Claim
15 Forms will be honored if postmarked after the Claims Period Deadline. If a Claim Form is timely
16 post-marked but is incomplete or otherwise deficient, the Claims Administrator will send the
17 Class Member a notice of deficiency, and the Class Member will have fifteen (15) calendar days
18 following the mailing of the notice of deficiency to cure the deficiency. If a Claim Form is post-
19 marked after the Claims Period Deadline, Defendant shall have the option to determine, in its sole
20 and absolute discretion, whether or not to accept the Claim Form. If a late submitted Claim Form
21 is accepted by Defendant, it shall be considered the same as if it had been timely submitted.

22 7.2.5 Class Members, except for the Class Representative, will have sixty (60)
23 calendar days from the date on which the Settlement Documents are mailed within which to opt-
24 out of (i.e., request exclusion from) the Settlement. Class Members who wish to exercise this
25 option must timely submit a signed and dated written request to be excluded from the Settlement
26 to the Claims Administrator ("Opt-Out Request"), which must state generally that they do not
27 wish to take part or being included in the Settlement. The Opt-Out Request must be postmarked
28

1 on or before sixty (60) calendar days from the date of mailing the Settlement Documents. Class
2 Members who do not timely submit an executed Opt-Out Request shall be deemed part of the
3 Settlement Class and bound by the Settlement. Class Members who timely submit an executed
4 Opt-Out Request shall have no further role in the Action, and for all purposes they shall be
5 regarded as if they never were a party to this Action or a Class Member, and thus they shall not be
6 entitled to any payment as a result of this Settlement and shall not be entitled to or permitted to
7 assert any objection whatsoever to the Settlement. The Notice of Settlement shall advise Class
8 Members of their ability to opt-out of the Settlement and of the consequences thereof. Neither the
9 Parties nor any of their counsel will solicit any Class Member to submit an Opt-Out Request.

10 7.2.6 Class Members who timely submit both an Opt-Out Request and a Claim
11 Form shall be sent a letter by the Claims Administrator requesting clarification of the Class
12 Member's intent. The letter will state that, unless the Class Member clarifies within seven
13 (7) calendar days that he or she intends to opt-out, the Class Member will be deemed to be a
14 Qualified Claimant and his or her opt-out request will be null and void.

15 7.2.7 Class Members, except for the Class Representative, will have sixty (60)
16 calendar days from the date of mailing the Settlement Documents within which to file an
17 objection to the Settlement. Only Class Members who have not filed an Opt-Out Request may
18 object to the Settlement. To object, a Class Member must file with the Court a written objection
19 and a notice of intention to appear at the Final Approval Hearing, simultaneously serve the
20 Parties' Counsel and the Claims Administrator with the written objection as set forth in the Notice
21 of Settlement, and appear at the Final Approval Hearing. The Parties and their counsel agree that
22 they will not solicit, encourage, counsel or advise any individual to object to the Settlement.

23 7.2.8 A Class Member may challenge his or her Settlement Payment by writing
24 on the Claim Form the number of Eligible Workweeks he or she contends to have worked for
25 Defendant during the Class Period, and submitting any accompanying supporting documentation
26 or other evidence. The number of Eligible Workweeks determined by Defendant shall be
27 rebuttably presumed to be correct and Defendant's records shall be rebuttably presumed correct

1 for purposes of determining whether a claimant is a Class Member. If the Class Member does not
2 provide any documents or other evidence, the challenge may be rejected by the Claims
3 Administrator. All other challenges will be resolved at the exclusive discretion and authority of
4 the Claims Administrator after seeking input from counsel for the Parties. The Claims
5 Administrator's decision shall be binding and non-appealable by Plaintiff, Defendant, or the Class
6 Member. Defendant will promptly provide any information or documents reasonably requested
7 by the Claims Administrator to make its determination.

8 7.2.9 Beginning fourteen (14) calendar days after the date on which the
9 Settlement Documents are mailed, the Claims Administrator shall provide to Class Counsel and
10 counsel for Defendant a weekly status report that will be cumulative, reflecting the number of
11 Class Members who have filed each of the following: completed Claim Forms, incomplete Claim
12 Forms, untimely Claim Forms, Claim Forms returned as undeliverable, objections, and Opt-Out
13 Requests.

14 7.2.10 If one percent (1%) or more of the total number of Class Members submit
15 timely and valid Opt-Out Requests, then Defendant shall have the option, in its sole and exclusive
16 discretion, to void the Settlement. To exercise this option, Defendant must send written
17 notification to Class Counsel within ten (10) calendar days of receiving the first status report from
18 the Claims Administrator after the passing of the Claims Period Deadline. If Defendant chooses
19 to exercise this option, the effect will be precisely the same as if Final Approval did not occur, as
20 discussed herein.

21 7.3 Final Approval

22 7.3.1 Prior to the Final Approval Hearing, Plaintiff will move the Court for entry
23 of the Order of Final Approval (and associated entry of Judgment): (a) certifying the Class for
24 Settlement purposes only, (b) finding the Settlement fair, reasonable, adequate, and in the best
25 interests of the Class Members, (c) approving Class Counsel's application for an award of
26 attorneys' fees and costs, (d) approving Class Representative's application for Service Payment,
27 (e) approving the payment of reasonable Settlement Administration Costs, and (f) (i) dismissing

1 all of the Class claims in the Action with prejudice and releasing and barring any further Released
2 Claims by Class Members who do not opt out of the Settlement, and (ii) dismissing all of the
3 claims of Jose Zaldivar in the Action with prejudice and dismissing Zaldivar as a party from the
4 Action and releasing and barring all of the Class Representative's Released Claims. The Parties
5 and their respective counsel shall make all reasonable efforts to secure entry of the Order of Final
6 Approval. The proposed Order of Final Approval (and the associated proposed Judgment) shall
7 be filed with the Court with the motion for Final Approval, or as otherwise directed by the Court.

8 7.3.2 Prior to the Final Approval Hearing, and at least one (1) week prior to the
9 Opt Out deadline, Class Counsel shall file a motion seeking approval of attorneys' fees and costs
10 and the proposed Service Payment to the Class Representative as set forth in the Stipulation.
11 Class Representative and Class Counsel agree that they shall be responsible for justifying the
12 amount of the Service Payment and attorneys' fees and costs to the Court, and they agree to
13 submit, as appropriate, the necessary materials to justify these payments. Defendant will not
14 oppose the amount of the Service Payment and attorneys' fees and costs sought, as long as they
15 are consistent with the Stipulation. If the Court (or any appellate court) awards less than the
16 amount requested for attorneys' fees and/or costs, or less than the amount requested for the
17 Service Payment for the Class Representative as set forth herein, only the awarded amounts shall
18 be paid and shall constitute satisfaction of the obligations of Defendant under this Stipulation.
19 Any unawarded attorneys' fees and/or costs shall revert back into the Settlement Pool for
20 distribution to Class Members.

21 7.3.3 Defendant shall have the sole right to void and withdraw from this
22 Stipulation if at any time prior to the Final Approval Date: (a) one percent (1%) or more of all
23 Class Members opt out of the Settlement; or (b) the Settlement is construed in such a fashion that
24 Defendant would be required to pay more than the Maximum Settlement Amount, plus
25 Defendant's share of the employer payroll taxes; or (c) the Court does not certify the settlement
26 class, or does not certify a class releasing the Released Claims set forth in this Stipulation, or
27 otherwise makes an order inconsistent with any of the material terms (as determined by
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1 Defendant) of this Stipulation; or (d) any pending litigation or litigation filed prior to the Final
2 Approval Date in any way prevents this Stipulation from resolving all claims identified in the
3 Class Representative's Released Claims and Released Claims, as defined herein; or (e) Plaintiff
4 or his counsel breaches this Stipulation.

5 7.3.4 If an appeal results in an order materially modifying, setting aside, or
6 vacating any portion of the Stipulation, with the exception of any modification of the amount of
7 attorneys' fees or costs to be paid to Class Counsel, or the amount of the Service Payment paid to
8 the Class Representative, each party adversely impacted by the order shall have the absolute right,
9 at its sole discretion, to treat such order as an event permanently preventing Final Approval. To
10 exercise this right, the party must inform the other party and the Claims Administrator, in writing,
11 of the exercise of this right, within ten (10) calendar days of receiving notice of any order
12 modifying, setting aside, or vacating any portion of the Stipulation. Before either Party elects to
13 exercise its right to treat such order as an event permanently preventing Final Approval, such
14 Party must meet and confer in good faith with the other Party to determine if an agreement can be
15 reached modifying this Settlement to the mutual satisfaction of the Parties.

16 7.3.5 If the Final Approval or Final Judgment does not occur, or if this
17 Stipulation is terminated or canceled pursuant to its terms, the Parties to this Stipulation shall be
18 deemed to have reverted to their respective status as of the date and time immediately prior to the
19 execution of this Stipulation. In such an event, if the Stipulation is not approved by the Court
20 substantially in the form agreed to by the Parties, or if the Settlement set forth in the Stipulation is
21 terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or
22 if the Judgment does not become a Final Judgment, or if the Final Approval Date does not occur,
23 this Stipulation (except for those provisions relating to non-admission, denial of liability set forth
24 herein, and the confidentiality agreements entered into by the Parties) shall be deemed null and
25 void, its terms and provisions shall have no further force and effect with respect to the Settling
26 Parties and shall not be used in this Action or in any other proceeding for any purpose, and any
27 Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be
28

1 treated as vacated, *nunc pro tunc*. Notwithstanding any other provision of this Stipulation, no
2 order of the Court, or modification or reversal on appeal of any order of the Court, reducing the
3 amount of any attorneys' fees or costs to be paid by Defendant to Class Counsel, or reducing the
4 amount of any Service Payment paid to the Class Representative, shall constitute grounds for
5 cancellation or termination of the Stipulation, or grounds for limiting any other provision of the
6 Judgment.

7 7.4 Funding and Distribution of the Settlement Proceeds

8 7.4.1 Within fifteen (15) calendar days after the Effective Date, Defendant shall
9 pay into the QSF set up, held, and controlled by the Claims Administrator the amounts necessary
10 to fund the Settlement and make the payments required by this Stipulation. In the event of any
11 appeal of attorneys' fees, costs, or the Final Judgment, the Claims Administrator shall ensure that
12 the monies in the QSF are in an interest bearing account. Any settlement, attorneys' fees, or costs
13 payments made thereafter to Qualified Claimants or Class Counsel will include the pro-rated
14 interest earned from the date of the notice of appeal until 30 days prior to the settlement payment.

15 7.4.2 Within thirty (30) calendar days of the Effective Date, the Claims
16 Administrator shall issue Settlement Payments to Qualified Claimants in the form of a check.

17 7.4.3 After one hundred eighty (180) calendar days of issuance, funds from
18 undeposited checks will be held by the Claims Administrator; if the Class Member to whom the
19 undeposited check is issued does not contact Class Counsel or the Claims Administrator
20 concerning his or her settlement payment within one-hundred eighty (180) calendar days of
21 issuance, the Stipulation of Settlement, including its release of claims, will be binding on that
22 Class Member (except with respect to FLSA claims), and the amount of that Class Member's
23 settlement payment shall be transmitted to the Controller of the State of California, to be held and
24 disposed of by the Controller in accordance with California's Unclaimed Property Law.

25 7.4.4 Within thirty (30) calendar days of the Effective Date, the Claims
26 Administrator shall pay the Court-approved Attorneys' Fees and Costs to Class Counsel or a trust
27 account designated by Class Counsel. Class Counsel shall provide to the Claims Administrator,
28

1 with a copy to Defendant, the pertinent taxpayer identification number and IRS Form W-9 within
2 ten (10) calendar days after the Final Approval Date.

3 7.4.5 Within thirty (30) calendar days of the Effective Date, the Claims
4 Administrator shall send a check by mail for the Court-approved Service Payment to the Class
5 Representative.

6 7.4.6 Within thirty (30) calendar days of the Effective Date, the Claims
7 Administrator shall send a check by mail to the California Labor Workforce Development
8 Agency for the State of California's share of the PAGA penalty payment and referencing the fact
9 of this Settlement.

10 7.4.7 Upon the Final Approval Date, the Released Claims in the Action will be
11 dismissed with prejudice on a class-wide basis.

12 **8. MISCELLANEOUS PROVISIONS**

13 8.1 Neither the acceptance nor the performance by Defendant of the terms of this
14 Stipulation, nor any of the related negotiations or proceedings, is or shall be claimed to be,
15 construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in
16 the Complaint, the representative character of the Action, the validity of any of the claims that
17 were or could have been asserted by Plaintiff and/or Class Members in the Action, or of any
18 liability or guilt of Defendant in the Action. Nothing in this Stipulation shall be construed to be
19 or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing
20 toward Plaintiff, the Class Members, or any other person, and Defendant specifically disclaims
21 any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, and any
22 other person. Each of the Parties has entered into this Stipulation with the intention to avoid
23 further disputes and litigation with the attendant inconvenience, expenses, and contingencies.

24 8.2 The Parties agree to cooperate fully with one another to accomplish and implement
25 the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of
26 such other documents and the taking of such other action as may reasonably be necessary to
27 fulfill the terms of this Settlement. The Parties to this Settlement shall exercise reasonable

1 efforts, including all efforts contemplated by this Settlement and any other efforts that may
2 become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set
3 forth herein.

4 8.3 Unless otherwise specifically provided herein, all notices, demands, or other
5 communications given hereunder shall be in writing and shall be deemed to have been duly given
6 as of the third business day after mailing by United States certified mail, return receipt requested,
7 addressed as follows:

8 To the Class Counsel:

9 David A. Garcia
10 Tafoya & Garcia LLP
11 316 W. 2nd St., Ste 1000
Los Angeles, CA 90012

12 To Defendant:

13 Eric Meckley
14 Jennifer Svanfeldt
Morgan, Lewis & Bockius LLP
15 One Market, Spear Street Tower
San Francisco, California 94105

16 8.4 The Parties hereto agree that the terms and conditions of this Stipulation of
17 Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and
18 that this Stipulation shall not be construed in favor of or against any party by reason of the extent
19 to which any party or its counsel participated in the drafting of this Stipulation.

20 8.5 Plaintiff, Class Counsel and all attorneys associated with Class Counsel agree that
21 they will not issue any press releases, initiate any contact with the press, provide any information
22 to the press, or otherwise publicize or cause to be publicized this case, this settlement, or the facts
23 leading up to the case or settlement, and represent that they have not done so prior to signing this
24 Stipulation. As an absolute condition of this Stipulation, Class Counsel will not post anything on
25 their website relating to this matter, except that Class Counsel may post the Settlement
26 Documents on their website, provided that the Settlement Documents shall be removed from the
27 website by the Effective Date. Any communication about the Settlement to Class Members other
28 than Plaintiff prior to the Court-approved mailing will be limited to a statement that a settlement

1 has been reached and the details will be communicated in a forthcoming Court-approved Notice
2 of Settlement. After the Effective Date, Class Counsel may refer to the fact of the settlement but
3 without naming Defendant or providing any other information that would reveal the identity of
4 Defendant, i.e. Defendant shall be referred to as "National Retail Company."

5 8.6 The Parties shall refrain from making any disparaging oral or written statements
6 concerning any of the other Parties. The Parties shall also refrain from taking any action, directly
7 or indirectly, which they know or reasonably should know to be disparaging concerning any other
8 Party. The Parties' promises in this subparagraph include any statements made to the media. The
9 Parties' promises in this subsection, however, shall not apply to any judicial or administrative
10 proceeding in which the Party is a party or has been subpoenaed to testify under oath by a
11 government agency or by any third party.

12 8.7 The Class Representative, by signing this Stipulation, is bound by the terms herein
13 and further agrees not to request to be excluded from the Settlement and not to object to any
14 terms of this Stipulation. Any such request for exclusion or objection shall therefore be void and
15 of no force or effect. Defendant, Class Counsel, and the Class Representative waive their rights
16 to file an appeal, writ, or any challenge whatsoever to the terms of this Stipulation, except
17 (1) either Party may appeal in the event an objector's objection is upheld by the trial court; and
18 (2) Plaintiff and her counsel have the right to appeal any order denying, in whole or in part, her
19 application for the award of attorney's fees and costs and/or Plaintiff's Service Payment.

20 8.8 Neither Class Counsel nor any other attorneys acting for, or purporting to act for,
21 the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees,
22 costs, or disbursements from the Defendant or the LLI Releasees except as expressly provided
23 herein.

24 8.9 This Stipulation may not be changed, altered, or modified, except in writing signed
25 by the Parties hereto and approved by the Court. This Stipulation may not be discharged except
26 by performance in accordance with its terms or by a writing used by the Parties hereto.

27 8.10 This Stipulation shall be binding upon and inure to the benefit of the Parties hereto
28

1 and their respective heirs, trustees, executors, administrators, successors, and assigns.

2 8.11 Because the members of the proposed Class are so numerous, the Parties agree that
3 it is impossible or impractical to have each Class Member sign this Stipulation. It is agreed
4 therefore, that for purposes of seeking approval of the Class Settlement, this Stipulation of
5 Settlement may be executed on behalf of the proposed Class by Class Counsel and the Class
6 Representative.

7 8.12 This Stipulation shall become effective upon its execution by all of the
8 undersigned. The Settling Parties may execute this Stipulation in counterparts, and execution of
9 counterparts shall have the same force and effect as if all Settling Parties had signed the same
10 instrument.

11 8.13 The Court shall retain jurisdiction with respect to the implementation and
12 enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of the
13 Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.
14 Any action to enforce this Stipulation shall be commenced and maintained only in the Court.

15 8.14 Paragraph titles or captions contained in this Stipulation are inserted as a matter of
16 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
17 Stipulation, or any provision thereof.

18 IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and
19 their duly authorized attorneys, as of the day and year herein set forth.

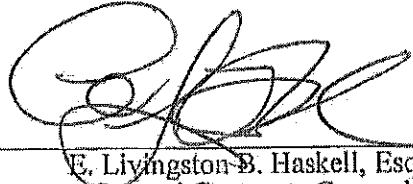
20 Dated: September 18, 2014

21 By


Jose Reyes Zaldívar, Plaintiff

22
23 Dated: September 26, 2014

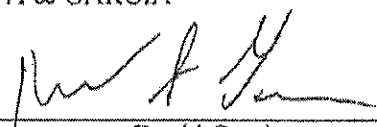
24 By


E. Livingston B. Haskell, Esq.,
General Corporate Counsel
LUMBER LIQUIDATORS, INC.

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Dated: September 18, 2014

TAFOYA & GARCIA

By 
David Garcia

Attorneys for Plaintiff and Class Members
MORGAN, LEWIS & BOCKIUS LLP

Dated: September 24, 2014

By 
Eric Meckley

Attorneys for Defendant
LUMBER LIQUIDATORS, INC.

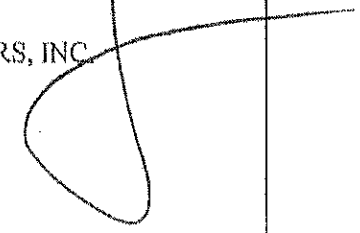


EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF CLASS ACTION SETTLEMENT
Crelencio Chavez, et al. v. Lumber Liquidators, Inc.
Case No. C-09-04812 SC

If you worked for Lumber Liquidators, Inc. (“Lumber Liquidators”) as a non-exempt employee between September 3, 2005, and the present in California you may be eligible to receive a payment as the result of a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- The settlement will provide a gross total amount of \$140,000 to resolve claims that Defendant Lumber Liquidators violated California’s Labor Code and to pay the Court-approved service payment to the Plaintiff/Class Representative, the Court-approved lawyers’ fees and costs, the costs of administering the Settlement, and payments to the California Labor Workforce Development Agency for penalties under the Private Attorneys General Act (the “PAGA”).
- The settlement resolves a lawsuit about whether Lumber Liquidators violated California’s Labor Code; avoids costs and risks to you from continuing the lawsuit; pays money to certain former and current Lumber Liquidators’ employees; and releases Lumber Liquidators from liability for certain claims.
- Court-appointed lawyers for the Settlement Class will ask the Court for up to thirty percent of the maximum settlement amount (\$42,000) for fees and expenses of investigating the facts, filing the case, and negotiating the settlement.
- The two sides disagree on the merits of the case, and whether Lumber Liquidators owed any additional money to its employees. Lumber Liquidators contends that it at all times paid employees properly and in compliance with all legal requirements.
- Your legal rights are affected whether you act or do not act, so please read this notice carefully.

Your Legal Rights and Options in this Settlement	
Submit a Claim Form	If you submit a timely and complete claim form, you can receive your share of the settlement money. In exchange, you give up any rights to sue Lumber Liquidators separately about the legal claims released by the Settlement.
Do Nothing	If you do nothing, and the Court approves the Settlement, you will be bound by the terms of the Settlement and the release, but you will not receive any money under the Settlement. The claims released will not, however, include claims under the federal Fair Labor Standards Act.
Ask To Be Excluded	<p>If you do not wish to participate and want to request exclusion from, or “opt out”, of the Settlement, you must submit a written Request for Exclusion from the Settlement bearing a post-mark from a date within the Claims Period. The Request for Exclusion must: (1) legibly state your name, Social Security Number, address and telephone number, (2) state that you request exclusion from or wish to “opt out” of the Settlement, (3) be dated, and (4) be signed by you. Requests for Exclusion must be made individually and cannot be made on behalf of a group of employees or on behalf of other Class Members. If you chose to opt out of the Settlement, you will not receive any money from the Settlement and will not be allowed to object to the Settlement.</p> <p>The judgment will bind all class members who do not request exclusion. Any member who does not request exclusion may, if they wish, enter an appearance through his or her own lawyer at his or her own expense.</p>
Object	If you disagree with the proposed Settlement, you may submit an objection (only if you have not requested to be excluded). If the Court agrees with your objection, the parties can choose whether to withdraw the Settlement or change its terms. If the Court rejects your objection and you have submitted a timely and complete claim form, you will be entitled to participate in the Settlement. You cannot both ask to be excluded and object to the Settlement.

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court overseeing this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and if there are appeals, after the appeals are resolved.

LUMBER LIQUIDATORS WILL NOT RETALIATE AGAINST YOU FOR YOUR DECISION TO SUBMIT A CLAIM FORM, DO NOTHING, ASK TO BE EXCLUDED/OPT OUT, OR OBJECT TO THE SETTLEMENT.

1. Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in the class action lawsuit currently pending in the United States District Court for the Northern District of California entitled *Chavez, et al. v. Lumber Liquidators, Inc.*, Case No. C-09-04812 SC (the "Action"). The purpose of this Notice is to describe the case, and to inform you of your rights and options in connection with the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning the fairness of the Settlement will be held before the Hon. Samuel Conti on _____, 2014 at _____ p.m. at the following address: Courtroom 1 of the Phillip Burton Federal Building & United States Courthouse, United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, to determine whether the case should be settled.

YOU MUST COMPLETE AND MAIL THE ENCLOSED CLAIM FORM ("CLAIM FORM") TO THE CLAIMS ADMINISTRATOR BY [INSERT DATE 60 CALENDAR DAYS AFTER SETTLEMENT DOCUMENTS ARE MAILED TO CLASS MEMBERS] TO BE ELIGIBLE TO RECEIVE A POSSIBLE PAYMENT UNDER THE SETTLEMENT. IF YOU DO NOT PROPERLY SUBMIT A TIMELY CLAIM FORM, YOU WILL NOT RECEIVE ANY MONEY UNDER THE SETTLEMENT, BUT YOU WILL STILL BE BOUND BY THE TERMS OF THE SETTLEMENT.

2. Why did you get this notice?

The Court has preliminarily approved for settlement purposes the following class (the "Class"):

"All current and former retail store employees of LLI classified as non-exempt and employed in California who were paid overtime wages and commission/sales bonus wages and/or other nondiscretionary compensation between September 3, 2005 through [INSERT DATE OF PRELIMINARY APPROVAL]."

According to the records of Lumber Liquidators, you are a member of the Class ("Class Member"). The purpose of this Notice is to inform you about the proposed Settlement and to explain your rights and options with respect to the Action and the Settlement.

3. What is this case about?

The individual bringing this action (the "Class Representative" or "Plaintiff") alleges the following claims against Lumber Liquidators on his behalf and on behalf of the Class Members: (a) failure to pay overtime wages; (b) failure timely to pay wages resulting from the failure to pay overtime wages; (c) failure timely to pay final wages upon termination; (d) failure to provide accurate, itemized wage statements; and (e) all penalties (including civil and statutory penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution and equitable relief (including under Business & Professions Code §§ 17200 et seq.), and additional damages related to such claims.

Lumber Liquidators does not admit engaging in any unlawful conduct as alleged in this lawsuit. Lumber Liquidators denies that it owes money related to unpaid overtime wages, wage statements, restitution, waiting time penalties, and related claims. Lumber Liquidators is settling the matter as a compromise. Lumber Liquidators reserves the right to object to any claim if for any reason the settlement fails. The Court file has the settlement documents with more information on the lawsuit.

4. *The lawyers representing you*

The court-appointed attorney for the Class Members ("Class Counsel") is:

David Garcia
Tafoya & Garcia LLP
316 W. 2nd St., Ste 1000
Los Angeles, CA 90012
Telephone: (213) 617-0600
Facsimile: (213) 617-2226
Website: www.tafoyagarcia.com

5. *The Settlement Terms.*

Subject to final Court approval, Lumber Liquidators will pay up to the total gross amount of \$140,000 (the "Maximum Settlement Amount"). The Court has preliminarily approved the following amounts to be funded from the total settlement amount:

1. Fee Award for Class Counsel: Class Counsel will request fees in the amount of up to \$42,000, which represents thirty percent (30%) of the Maximum Settlement Amount. The Court will not determine the amount of fees until the Final Approval Hearing. The Fee Award shall compensate Class Counsel for the work they have performed in this action. Class Members are not personally responsible for any of Class Counsel's attorneys' fees.
2. Service Payment to Class Representative: Class Counsel will also seek an enhanced recovery of no more than \$10,000 for Jose Reyes Zaldivar for acting as representative plaintiff on behalf of the Settlement Class. This will be in addition to whatever payment he is otherwise entitled to as a class member. If approved by the Court, this amount will be paid from the total settlement amount for his risk and service on behalf of the Settlement Class which included, among other things, reviewing documents, submitting to a deposition, attending strategy sessions and meetings with Class Counsel, and performing other services of that nature.
3. Settlement Administration Costs: Settlement Administration Costs in an amount estimated not to exceed \$15,000 to the Settlement Administrator, CPT Group, for its services, including but not limited to distributing Class Notices and Claim Forms to Class Members, processing Claim Forms, calculating Settlement Payments for Qualified

Claimants, and distributing Settlement Payments to Qualified Claimants.

4. **PAGA Penalties:** Lumber Liquidators shall pay Ten Thousand Dollars (\$10,000) for settlement of any and all claims for which penalties under the Private Attorney General Act ("PAGA"), Labor Code §§ 2698 *et seq.*, may be sought or otherwise available. The PAGA payment shall be allocated as follows: \$7,500 (75%) to the California Labor & Workforce Development Agency ("LWDA"), and \$2,500 (25%) to the Qualified Claimants on a *pro rata* basis.

All of the foregoing payments are subject to final approval from the Court.

6. *What claims are being released by the proposed Settlement?*

Upon Final Approval, Plaintiff and each Class Member who does not request exclusion from the settlement is deemed to fully release and discharge Lumber Liquidators, Inc. and all affiliated parties and entities (including its past and present affiliates, parents, subsidiaries, predecessors, owners, successors, shareholders, divisions, and each of these entities past and present directors, officers, employees partners, shareholders and representatives) of all federal, state, and local law claims related or pertaining to the: (a) failure to pay overtime wages; (b) failure timely to pay wages resulting from the failure to pay overtime wages; (c) failure timely to pay final wages upon termination; (d) failure to provide accurate, itemized wage statements; and (e) all penalties (including civil and statutory penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution and equitable relief (including under Business & Professions Code §§ 17200 *et seq.*), or additional damages that arise from or relate to the claims described in (a) through (d) above under any applicable law, that accrued or accrue through the last date on which an Opt-Out Request must be submitted to the Claims Administrator (as set forth below) ("Released Claims"). **State and Federal Statutory Claims:** The Released Claims specifically include any and all claims arising under the Fair Labor Standards Act ("FLSA"); any and all claims arising under the California Labor Code, including, without limitation, §§ 201, 202, 203, 204, 204b, 210, 215, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.6, 510, 558, 1194, 1194.2, 1194.3 and 2698-2699.5, and the California Business & Professions Code §§ 17200 *et seq.* Settlement Class Members who do not timely opt out of the Settlement shall be deemed to have fully released all Released Claims. Settlement Class Members who do not submit a Claim Form or who submit late Claim Form that is not accepted by Lumber Liquidators will not be deemed to have waived or released any claim(s) that may exist under the FLSA.

With respect to the Released Claims only, each Class Member who does not request exclusion from the Settlement also expressly, knowingly, and intentionally waives and relinquishes, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor [i.e., a Class Member] does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor [i.e., the Lumber Liquidators Releasees].

7. *If I make a claim, how is my share of the Settlement calculated?*

Each Qualified Claimant may receive a Settlement Payment, which is a share of the Net Settlement Amount (the Net Settlement Amount or "Settlement Pool" is calculated by deducting attorneys' fees, claims administration costs, a service award to the Plaintiff/Class Representative, and PAGA penalty payment from the Maximum Settlement Amount).

The Settlement Payment is the sum of an Overtime Settlement Amount and an Eligible Workweek payment. The Overtime Settlement Amount is based on the amount of overtime hours worked and amount of commission/sales bonus wages paid while you were employed by Lumber Liquidators in California from September 3, 2005 through the Preliminary Approval Date and calculated specifically using the following steps: For any period of time within the Class Period during which Lumber Liquidators did not include commission/sales bonus wages in the calculation of the "regular rate" for payment of overtime, (1) the total monthly commission/sales bonus wages will be divided by the total monthly hours worked during the month in which the commission/sales bonus was earned, (2) the sum of that figure will be divided by 2 to arrive at the sales bonus overtime rate, (3) the applicable sales bonus overtime rate shall be multiplied by all overtime hours worked during the month in which the commission/sales bonus was earned, (4) the applicable sales bonus overtime rate shall be multiplied by 2 and then multiplied by all double time hours (if any) worked during the month in which the commission/sales bonus was earned, and (5) the sum of the results of steps 3 and 4 shall be the Overtime Settlement Amount.

After the Overtime Settlement Amount is deducted from the Settlement Pool, any remaining amount will be distributed *pro rata* on a workweek basis for all Eligible Workweeks worked by Class Members. All Workweeks for Class Members whose employment terminated prior to the Preliminary Approval Date and after September 3, 2006, will be credited with an additional two (2) Workweeks to recognize the potential recovery of Labor Code § 203 waiting time penalties for those Class Members. For example, a formerly employed Class Member who worked for five (5) Workweeks prior to the Preliminary Approval Date but after September 3, 2006 and five (5) Workweeks prior to September 3, 2006 would be credited with twelve (12) Eligible Workweeks (e.g., 5 + 2 + 5). Eligible Workweeks are calculated using the number of pay periods for which each Class Member received a pay check (which thus reflects full work workweeks) while the Class Member worked in an eligible position category or job title during the Class Period. The total of all Eligible Workweeks worked by all Class Members will be the total Eligible Workweeks. After the Overtime Settlement Amount is deducted from the Settlement Pool, the remaining amount will be divided by the total Eligible Workweeks to produce a dollar amount that will be the value of one Eligible Workweek: (e.g., Settlement Pool minus Overtime Settlement Amount ÷ total Eligible Workweeks = Workweek Value). The payment to each Qualified Claimant for his or her Eligible Workweeks is determined by multiplying each Qualified Claimant's individual Eligible Workweeks by the Workweek Value. Any unclaimed amounts from the Settlement Pool will remain the property of Lumber Liquidators.

The attached Claim Form lists your estimated Settlement Payment. If you believe that the number of Eligible Workweeks listed on the Claim Form is incorrect, you must send a letter to the Claims Administrator on or before the deadline to file a claim along with the Claim Form indicating what you believe to be the correct number of Workweeks. You must also send any

documents or other information that support your belief. The Claims Administrator will resolve any dispute regarding your Workweeks based on Lumber Liquidators records and any information that you provide.

For purposes of tax payment obligations, all Settlement Payments shall be allocated as follows: unpaid wages = 33.33% of each Settlement Payment; interest = 33.33% of each Settlement Payment; and penalties = 33.33% of each Settlement Payment. The portion of the Settlement Payment attributable to unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings (for the employee portion only), and will be reported on an IRS Form W-2.

None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

8. *What are my options in this matter?*

You have four options under this Settlement, each of which is discussed below. You may (A) claim your Settlement Payment, (B) exclude yourself from the Settlement, (C) object to the Settlement, or (D) do nothing.

(A) IF YOU WANT TO CLAIM YOUR SHARE OF THE SETTLEMENT MONEY: In order to receive money from the Settlement, you must submit a claim by filling out the enclosed Claim Form, and it must be postmarked no later than _____ [insert date 60 days from the date Notice mailed]. By executing the Claim Form, you are consenting to the terms of the Settlement. The Claim Form will also serve as your consent to become a party-plaintiff pursuant to Section 16(b) of the FLSA. Lumber Liquidators will not retaliate against any person who participates in this Settlement.

To be eligible to receive your Settlement Payment, you must submit your Claim Form, postmarked by _____, to the Claims Administrator:

[address]

Claim Forms postmarked after _____ will be denied

(B) IF YOU WANT TO BE EXCLUDED FROM THE SETTLEMENT: If you do not wish to participate and want to request exclusion from, or "opt out", of the Settlement you must submit a written Request for Exclusion from the Settlement bearing a post-mark from a date within the Claims Period. The Request for Exclusion must: (1) legibly state your name, Social Security Number, address and telephone number, (2) state that you request exclusion from and wish to "opt out" of the Settlement, (3) be dated, and (4) be signed by you. Requests for Exclusion must be made individually and cannot be made on behalf of a group of employees or on behalf of other Class Members. If you chose to opt out of the settlement you will not receive money from the settlement. The judgment will bind all Class Members who do not request exclusion. Any member who does not request exclusion may, if he or she wishes, enter an appearance through his or her own lawyer at his or her own expense.

(C) IF YOU WANT TO OBJECT TO THE SETTLEMENT: You may object, personally or through an attorney, to the Settlement by filing your objection with the Clerk of the Court of the United States District Court for the Northern District of California, Judge Samuel Conti, Case No. C-09-04812 SC, and mailing it to counsel for the Parties. Your objection must specify your desire to appear at the fairness hearing (if you intend to do so) and describe the nature of your comments or objections. Such notice must be filed with the Court no later than [insert date 60 days from the date Notice mailed]_____, 2014, and a copy of it must be sent the same date to:

Attorneys for the Plaintiff, Jose Zaldivar
David Garcia, Esq.
Tafoya & Garcia LLP
316 W. 2nd St., Ste 1000
Los Angeles, CA 90012
Telephone: (213) 617-0600

Attorneys for Lumber Liquidators, Inc.:
Eric Meckley, Esq.
MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1000

If you do not timely comply with this procedure, you may not be entitled to be heard at the fairness hearing or to otherwise contest the approval of the settlement, or to appeal from any related orders or judgments of the Court. If you opt out/request exclusion from the Settlement, you cannot object to the Settlement.

(D) IF YOU CHOOSE TO DO NOTHING: If you do nothing, and the Court approves the Settlement, you will be bound by the terms of the Settlement and the release of claims, but you will not receive any money under the Settlement.

When and where is the final approval hearing?

The Court will conduct a final approval hearing on _____, 2014 in Courtroom 1 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102. At that hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel's request for attorney's fees and costs, and the enhancement awards to be paid to the Class Representative. Unless you have timely filed an objection to the settlement, IT IS NOT NECESSARY FOR YOU TO APPEAR AT THE HEARING.

9. How can I get additional information?

This Notice only summarizes the Action, the basic terms of the Settlement, and other related matters. For more information, you may review the Court's files, including the detailed Joint Stipulation of Settlement, which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Joint Stipulation of Settlement, may be examined at the Records Office of the Clerk of the United States District Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102. You can also request a copy of the Joint Stipulation of Settlement from Class Counsel, at the address and telephone number listed above.

Any questions regarding this Notice or the Claim Form should be directed to the Claims Administrator or to Class Counsel at the above addresses and telephone numbers listed in Questions 4 and 8 above.

10. *What happens if my address has changed or changes?*

If you submit a valid Claim Form, your payment will be sent to the address on your Claim Form. Therefore, if your address changes or is different from the one on the preprinted Claim Form, you must correct it by notifying the Claims Administrator in writing, by First-Class U.S. Mail. Neither the Claims Administrator nor Class Counsel has a duty under the terms of the Settlement to conduct any research or skip tracing to locate a new address after receipt of your Claim Form.

**PLEASE DO NOT CALL OR WRITE THE COURT OR THE ATTORNEYS FOR
LUMBER LIQUIDATORS ABOUT THIS NOTICE**

BY ORDER OF THE U.S. DISTRICT COURT

EXHIBIT 2

CLAIM FORM AND OPT IN NOTICE

Crelencio Chavez, et al. v. Lumber Liquidators, Inc.

United States District Court Northern District of California, Case No. C-09-04812 SC (the "Action")

If you want to obtain a Settlement Payment from the Settlement that is described in the Notice of Class Action Settlement, you must complete all of the requested information, sign, date and return this Claim Form and Opt In Notice ("Claim Form") postmarked no later than _____, 2014, to:

Crelencio Chavez, et al. v. Lumber Liquidators, Inc.

c/o

CPT Group

[Mailing address, telephone and facsimile numbers of Claims Administrator]

**IF YOU DO NOT RETURN THIS FORM POSTMARKED BY _____, 2014,
YOU WILL NOT BE ELIGIBLE TO RECEIVE THE SETTLEMENT PAYMENT SET FORTH
BELOW.**

- I. VERIFY YOUR NAME AND ADDRESS.** PLEASE REVIEW THE FOLLOWING INFORMATION CAREFULLY TO MAKE SURE THAT IT IS CORRECT. IF ANY OF THE INFORMATION IS INCORRECT OR MISSING, PROVIDE THE CORRECT INFORMATION IN THE BLANK SPACE TO THE RIGHT OF THE PRE-PRINTED INFORMATION.

If your name has changed, please provide an explanation and supporting documentation (e.g., marriage certificate, etc.).

«Barcode» Claim #: MIM-«Claim»-«CD» «MailRec»

Name/Address Corrections (if any):

«First1» «Last1»

«c/o»

«Address1» «Address2»

«City»,«ST» «ZIP» «Country»

- II. PROVIDE THE LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER.** To make a claim, you must provide the last four digits of your social security number in the blank space below with your signature.

- III. CALCULATION OF SETTLEMENT PAYMENT.** The Settlement Payment is comprised of two elements. The first element will be calculated using a formula based upon any instances during the Class Period when you were paid commissions and/or sales bonuses or other forms of non-discretionary incentive compensation but were not paid any applicable overtime on such amounts. The second element will be calculated based on the number of Eligible Workweeks that you worked for Lumber Liquidators, Inc. ("Lumber Liquidators") in an eligible position at a location in California during the Class Period. Eligible Workweeks are calculated using the number of pay periods for which each Class Member received a pay check. Class members whose employment terminated after September 3, 2006 and prior to the Preliminary Approval Date will be credited with an additional two (2) workweeks. The complete formula for calculating the settlement payment is explained in further detail in the Notice of Class Action Settlement.

Lumber Liquidators' records show that you worked the following number of full workweeks during the applicable period: _____.

Based upon the above information, the estimated amount that you will receive as part of this Settlement is: \$[INSERT ESTIMATED SETTLEMENT PAYMENT].

- IV. **PROCEDURE TO CHALLENGE NUMBER OF WORKWEEKS.** If you believe that the number of workweeks listed above is incorrect and wish to challenge the data, you must attach to this Claim Form any documents that support the number of Workweeks you believe is correct (for example, pay stubs or payroll records). Lumber Liquidators' records are presumed to be correct unless the documents you provide prove otherwise. Please keep in mind that only employment with Lumber Liquidators in a position that was not classified as salaried and exempt, at a location in California during the time period of September 3, 2005 through [INSERT PRELIMINARY APPROVAL DATE], will be considered.
- V. **CHANGE OF ADDRESS.** It is your responsibility to keep a current address on file with the Claims Administrator. Please make sure to notify the Claims Administrator of any change of address.
- VI. **ACKNOWLEDGMENT OF RELEASE OF CLAIMS.** I understand, acknowledge, and agree that, by signing and submitting this Claim Form, my total recovery will be the amount provided in the Settlement, subject to the terms of the Settlement, and that if the Settlement becomes effective, I will be releasing and discharging all of the "Released Claims" against Lumber Liquidators and each of their past, present and/or future, direct and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors and/or assigns (the "LLI Releasees") that are described in detail in Question 6 entitled "What claims are being released by the proposed Settlement?" in the Notice of Class Action Settlement that I received and reviewed.
- VII. **CERTIFICATION.** By signing this Claim Form, I hereby certify that I have read and understand the Notice of Class Action Settlement, including the release provisions.
- VII. **CONSENT TO JOIN SETTLEMENT OF FLSA CLAIMS.** By signing this Claim Form, I hereby consent in writing to become a party-plaintiff in the Action pursuant to Section 16(b) of the Fair Labor Standards Act, and authorize Class Counsel to act on my behalf in all matters relating to the Action, including the settlement of my claims.
- VIII. **NON-RETALIATION.** I understand that Lumber Liquidators may not retaliate against me in any manner as a result of my submitting this Claim Form.
- IX. **DECLARATION.** I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Dated:

(Signature)

Print Name

Last Four Digits of Social Security Number: XXX-XX-_____

1 **PROOF OF SERVICE**

2
3 I, Mildred Murillo, declare: I am and was at the time of the service mentioned in this declaration,
4 employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action.
5 My business address is Tafoya & Garcia LLP, 316 W. 2nd St, Ste 1000 Los Angeles, California 90012.

6 On November 17, 2014 I served a copy(ies) of the following document(s):

7 **PLAINTIFF JOSE ZALDIVAR'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
8 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN**
9 **SUPPORT THEREOF; DECLARATION OF DAVID A. GARCIA ON SUPPORT OF PLAINTIFF JOSE**
10 **ZALDIVAR'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; JOINT**
11 **STIPULATION OF CLASS ACTION SETTLEMENT**

12 on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

13 **Eric Meckley, Esq.**
14 **Jennifer P. Svanfeldt, Esq.**
15 **Morgan, Lewis & Bockius LLP**
16 **One Market, Spear Street**
17 **Tower**
18 **San Francisco, CA 94105-1126**

19 ☒ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business
20 practices of Tafoya & Garcia LLP, Los Angeles, California. I am readily familiar with Tafoya & Garcia
21 LLP's practice for collecting and processing of correspondence for mailing with the United States Postal
22 Service, said practice being that, in the ordinary course of business, correspondence with postage fully
23 prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

24 ☐ BY OVERNIGHT COURIER – I caused the above-referenced document(s) to be delivered via FedEx, an
25 overnight courier service, for delivery to the above addressee(s).

26 ☐ (BY Electronic Service via the Lexis/Nexis File & Serve Website): Pursuant to the Court Order
27 establishing the case website and authorizing the electronic service, documents, I caused such
28 document(s) to be transmitted to the Lexis/Nexis File Serve & website
(<http://www.lexisnexis.com/fileandserve>) and hereby served on all designated recipients via such website.

☐ BY FACSIMILE: I served by facsimile a true copy of the above-described document. I am "readily
familiar" with this firm's practice of processing correspondence by fax. Under that practice documents
are placed in our fax machine and are processed and received simultaneously at their destination. The
above-referenced document(s) was placed in the fax machine with all costs of faxing prepaid, directed to
each party (using their fax number), listed on the attached Service List. Once the document has been
transmitted, the fax machine provides a report indicating time of completion

I declare that I am employed in the office of a member of the bar of this court, at whose direction this service
was made. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct,
and this declaration was executed on November 17, 2014 at Los Angeles,
California.

27 
28 Mildred Murillo